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**Dated:** February 22, 2010

**Name of Person Certifying:** /Guy Cumberbatch, Reg. No. 36,114/

**Printed Name:** Guy Cumberbatch

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

5 In re Application of: Huynh, et al. ) Group Art Unit: 3738  
Application No.: 10/802,314 )  
Filing Date: March 17, 2004 ) Examiner: Brian E. Pellegrino  
10 For: LOW-PROFILE HEART VALVE SEWING ) Confirmation No.: 3894  
RING AND METHOD OF USE )  
Customer Number: 30452

Mail Stop APPEAL BRIEF-PATENTS

15 Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RENEWED**

**PETITION UNDER 37 C.F.R. §1.181**

Dear Sir:

This is a request for reconsideration within two months of the Decision dated January 19, 2010 on the Rule 181 Petition filed December 21, 2009. This request asks for reconsideration of the previous findings, but also submits a FOURTH Supplemental Appeal Brief in an attempt to satisfy the requirements of Rule 41.37(c)(1)(v). We plead with the Office to either overrule the previous decisions and permit this Appeal to continue, or accept the additional information in the attached FOURTH Supplemental Appeal Brief and permit the Appeal to proceed. This application has been pending for nearly 10 years - the abandoned parent was filed June 21, 2000 and this application is a continuation. To require a Petition to Revive at this stage based on a technicality seems inequitable. At each stage we have made bona fide attempts to address the deficiencies in the Appeal Brief, and have never been asked to provide so much detail before.

Moreover, the decision to abandon the application was made prior to any specific request by the Office for certain information under Rule 41.37(c)(1)(v), and such information (and any follow-ups) would have readily been provided upon a telephone call to the prosecuting attorneys. Abandonment seems out of proportion.

Serial No.: 10/802,314  
Docket No.: ECV-5539CON  
Renewed Petition under 37 C.F.R. §1.181 dated February 22, 2010  
Responsive to the Petition Decision dated January 19, 2010

The following is a timeline of the Appeal Brief requests and responses:

Date	Paper	Summary/Comments
9/22/08	Appeal Brief	Included Claim Summary section 41.37(c)(1)(v) with the same detail as submitted in many previous Appeal Briefs
10/2/08	1 <sup>st</sup> Non-Compliance Notice	Deficient Claim Status section 41.37(c)(1)(iii), need to identify claims on appeal
10/24/08	1 <sup>st</sup> Supplemental Appeal Brief	Added statement that claims 1-21 “are on appeal”
1/6/09	Examiner’s Answer	Examiner Pellegrino states that section 41.37(c)(1)(v), Summary of Claimed Subject Matter, “is correct”
7/13/09	2 <sup>nd</sup> Non-Compliance Notice	Paralegal Perry finds section 41.37(c)(1)(v) deficient because it “maps to the Published Application” and not to the original specification
7/20/09	3 <sup>rd</sup> Non-Compliance Notice	Specialist Monroe finds section 41.37(c)(1)(v) deficient because it “does not refer to the independent claims 1 and 11, which shall refer to the specification by page and line number”
8/21/09	2 <sup>nd</sup> Supplemental Appeal Brief	Corrects section 41.37(c)(1)(v) by referring to specification page and line number, not to Published Application
11/23/09	4 <sup>th</sup> Non-Compliance Notice	Examiner Pellegrino finds section 41.37(c)(1)(v) deficient because it “is vague and unclear as to exactly what defines the specific limitations of the claims.” Appeal dismissed, application held abandoned
12/21/09	Rule 181 Petition	Requests reconsideration of Appeal dismissal/abandonment, or acceptance of 3 <sup>rd</sup> Supplemental Appeal Brief
12/21/09	3 <sup>rd</sup> Supplemental Appeal Brief	Corrects section 41.37(c)(1)(v) by adding more information
1/19/10	Petition decision	Examiner Yuen finds section 41.37(c)(1)(v) still deficient because it fails to “show or reveal where the limitation of ‘configured to pivot between bi-stable positions’ is defined”

Pursuant to the guidance provided in MPEP §1205.03, **Appellants petition the Director to a) overrule the holding of non-compliance dated November 23, 2009, which included a holding of abandonment and dismissal of Appeal, and b) accept the attached FOURTH Supplemental Appeal Brief correcting the deficiencies noted.**

5           **Again, it is not clear whether a Petition fee was due; section 1.181(d) refers to a fee in “the appropriate section of this part,” and section 41.3(c) states that no fee is due for petitions “seeking supervisory review.” Likewise, we assume no new fee is due for this Renewed Petition. However, if a Petition Fee (e.g., \$400 under 37 CFR §41.20(a)) is deemed necessary, please charge it to Deposit Account No. 50-1225 (ECV-5539CON).**

10           Summary of Issues

15           The dismissal of the Appeal and holding of abandonment in the 11/23/09 Notice of Non-Compliance was apparently because of a deficient response to the July 13/20 Notices of Non-Compliance. On 11/23, Examiner Pellegrino expounded on the need for more information in the “Claim Summary” section, though such was not at issue from the July 13/20 Notices. Moreover, Examiner Pellegrino approved of the Claim Summary section in his Examiner’s Answer of 1/6/09. Applicants object to the unfairness of suddenly holding the application abandoned when a bona fide attempt was made to correct the deficiencies in the July 13/20 Notices. Moreover, Applicants object to the Examiner making that decision seemingly contrary to his earlier finding that the Appeal Brief was in order. If Examiner Pellegrino had noticed that more information was required, and had reconsidered his earlier approval, so be it. But we would expect to receive some notice of such and an opportunity to respond. Instead, we are faced with the choice of appealing the Examiner’s abandonment or paying a hefty fee for revival.

25           July 13/20 Non-Compliant Notices

          In the July 13 Notice of Non-Compliance, Deborah L. Perry the Supervisory Paralegal Specialist pointed out in detail that the claim explanation section 41.37(c)(1)(v) **should refer to the original page and line numbers and not to the paragraphs from the published**

**application.** No mention was made of any further deficiency, the page and line number cross-reference being the only apparent defect.

In the July 20 Notice of Non-Compliance, Bridget C. Monroe, a Patent Appeals Center Specialist, checked the box for a deficient section 41.37(c)(1)(v). Specialist Monroe noted that  
5 the Claim Summary section “does not refer to the independent claims 1 and 11, which shall refer to the specification by page and line number and to the drawings, if any.” This request does not look any different, and certainly is no more specific, than the basic requirements under 37 CFR §41.37(c)(1)(v). In any event, the 2<sup>nd</sup> Supplemental Appeal Brief dated 8/21/09 referred to and provided support for claims 1 and 11, so the explanation from Specialist Monroe was factually  
10 incorrect.

The combination of Non-Compliant Notices from July 13 and 20 appeared to be simply a request to cite to the page and lines numbers from the original specification as opposed to the Published Application. There was no specific request for more detail on the claim support, simply a reiteration of 37 CFR §41.37(c)(1)(v).

15 Consequently, the 2<sup>nd</sup> Supplemental Appeal Brief of 8/21/09 was a bona fide attempt to address the deficiencies noted by replacing the published paragraph references with the corresponding page/line number references. This would appear to be a complete response based on the July 13/20 Notices of Non-Compliance.

It is worth noting here that the undersigned has received these Notices asking for  
20 correction of technical deficiencies in Appeal Briefs a number of times. They are standard, and come with the territory when submitting a document with so many formalities. Only once or twice have we been required to submit more detailed support for the claims, and our responses have been no more specific than what was included on 8/21/09. Accordingly, we viewed the Notices of July 13/20 as being technical in nature, and had no suspicion that more specifics in the  
25 claim summary section was required.

#### November 23 Non-Compliant Notice

In the November 23 Notice of Non-Compliance, Examiner Pellegrino requested further substance as to the claim element references. **This was the first time that more detail was**

**required.** As stated above, this requirement is manageable but an opportunity to respond is expected. Instead, Examiner Pellegrino held the case abandoned and the Appeal dismissed. In a telephone conference on December 14, 2009, Examiner Pellegrino noted that this harsh decision was partly because we had not responded satisfactorily to the previous Non-Compliant Notices.

5 However, as explained, the previous Notice did not ask for more detail, and we responded completely. So, while we accept and would like to respond to the new request for substance, we strenuously object to the case being abandoned and the Appeal dismissed.

#### December 21 Petition

10 The Petition explained the prosecution that is detailed herein, and asked for reconsideration. In addition, further detail regarding claim support was supplied in a THIRD Supplemental Appeal Brief. This was a bona fide attempt to supply the apparently missing claim support.

15 It is worth noting here that the independent claims are relatively short and have very few structural elements and characteristics. A brief review of the cited specification and drawings, especially as amended in the THIRD Supplemental Appeal Brief, should be sufficient for the busy Appeal judge to understand what is claimed. The assertion that the claims cannot be understood without even more does not seem reasonable.

#### 20 January 19, 2010 Petition Decision

Special Programs Examiner Yuen finds section 41.37(c)(1)(v) still deficient and rejects our petition.

Several passages in the Decision raise questions:

25 First, on page 2, first full paragraph, Ex. Yuen correctly notes that we asserted that Specialist Perry made no mention of any substantive deficiency in her July 13 Non-Compliant Notice. But in the next sentence, Ex. Yuen states that “therefore, the August 21, 2009 second supplemental appeal brief fails to correct the deficiency.” This seems to be a conclusion reached by Ex. Yuen, and if so, the conclusion makes no sense.

Significantly, later in the paragraph, Ex. Yuen states that the August 21, 2009 second supplemental appeal brief “would appear to be a complete response based on the July 20 Notice of Non-Compliance.” **If so, then the subsequent Notice on November 23 suddenly abandoning the case would seem in error.**

5           Indeed, lower on page 2 of Ex. Yuen’s Decision, in the Discussion section, he states that “there is absolutely no substantive correction required [from the July 13/20 Notices]. The requirement of 37 CFR §41.37(c)(1)(v) is strictly a formality requirement.” Ex. Yuan contends, therefore, that our “argument regarding substantive deficiency is not persuasive,” and that “the dismissal of appeal was due to the appellant’s  
10           failure to make the formality corrections as required by the BPAI.”

Appellant’s argument regarding substantive vs. formal requirements was made to show that we had fully responded to the July 13/20 Notices, and Ex. Yuen concurs. Why then was the Appeal sent back to Examiner Pellegrino, who finds fault with the previous responses? And why  
15           then was the present Petition rejected, when Ex. Yuen agrees with our argument?

The answer is that there is a new reason that is holding things up, only first explained by Ex. Pellegrino on 11/23/09, and now expounded on by Ex. Yuen. That is, both examiners require something more in section §41.37(c)(1)(v), whether it be called formal or substantive. Fair enough, but again, Appellants were not given fair notice of the additional detail required  
20           before the application was abandoned on 11/23/09.

In particular, Ex. Yuen finds section 41.37(c)(1)(v) still deficient because it fails to “show or reveal where the limitation of ‘configured to pivot between bi-stable positions’ is defined.” Now this is even more detail required, to which we would also like an opportunity to respond. It is unfair for Ex. Yuen to cite a particular requirement after the fact as the basis for holding the  
25           previous response insufficient. Moreover, the quoted limitation is clear from the cited specification and drawings (see Figures 11A-11C).

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Summary and Renewal Request

So that brings us to the bottom line: we *now* understand what is required in the Claim Summary section, and have supplied it as best we can in the attached FOURTH Supplemental Appeal Brief. A brief look at the claims and the updated Claim Summary section should persuade any fair-minded examiner that we have spotlighted the specific passages and drawings from which independent claims 1 and 11 derive support.

**Appellants first Petition the Director** to recognize that the previously submitted SECOND Supplemental Appeal Brief of August 21 addressed all of the deficiencies (technical or otherwise) that were cited. Because the SECOND Supplemental Appeal Brief was responsive, Appellants Petition the Director to reverse Ex. Pellegrino's 11/23/09 holding of abandonment, which was premised on the allegation that the previous responses were not in compliance.

**Appellants also Petition the Director** to accept the FOURTH Supplemental Appeal Brief attached hereto which adds further references to the specification and drawings for elements in the independent claims.

If this Petition is granted, Appellants assume that the Appeal will be reinstated and that no abandonment of the application will have occurred.

Respectfully submitted,

Date: February 22, 2010

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